

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	4:98CR3007
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
JOSE C. TAPIA,	)	
	)	
Defendant.	)	

The defendant's appeal of his "Motion to Recall the Mandate" (raising 28 U.S.C. § 2255 issues) is now pending before the Eighth Circuit Court of Appeals. (Filing 261, Notice of Appeal dated April 25, 2005; Filing 265, Scheduling Letter from Eighth Circuit Court of Appeals.) By order dated April 28, 2005 (filing 263), I found that the appeal was not taken in good faith and that the defendant was not entitled to appeal in forma pauperis. The defendant now seeks to appeal my April 28, 2005 order. On July 15, 2005, his notice of appeal of filing 263 was filed as of June 24, 2005 in this court, as instructed by the Clerk of the Eighth Circuit Court of Appeals. (Filing 268.)

The Clerk of the United States District Court for the District of Nebraska has entered a memorandum stating that the appeal in filing 268 appears to be untimely (filing 269) and a separate memorandum requesting advice on whether the defendant will be permitted to appeal in forma pauperis (filing 270). This order responds to those memoranda.

Filing 268, the most recent notice of appeal, was filed as of June 24, 2005. It appeals an April 28, 2005 order and was required to be filed within 60 days of April 28, 2005. Fed. R. App. P. 4(a)(1)(B) (applicable to § 2255 appeals; when the United

States is a party, notice of appeal must be filed with the clerk of the district court within 60 days after the judgment or order appealed from is entered). Thus filing 268 is timely.

For the reasons stated in filing 263, pursuant to Fed. R. App. P. 24(a)(3), I certify that the appeal is not taken in good faith and the defendant is not entitled to proceed on appeal in forma pauperis.

IT IS ORDERED:

1. The appeal in filing 268 shall be processed as timely;
2. The appeal in filing 268 is not taken in good faith and the defendant is not entitled to proceed on appeal in forma pauperis; and
3. The Clerk of the Court shall forward a copy of this order with the Notice of Appeal.

July 19, 2005.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge